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::आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::  
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / फाइल संख्या Appeal / File No.	मूल आदेश सं / OIO No	दिनांक / Date
	V2/19/EA2/RAJ/2016	07/D/2016-17	13.06.2016

50567K 504

ख अपील आदेश संख्या (Order-In-Appeal No.):

**RAJ-EXCUS-000-APP-075 -2017-18**

आदेश का दिनांक / 27.09.2017 जारी करने की तारीख / 29.09.2017  
Date of Order: Date of issue:

कुमार सतोष, आयुक्त (अपील), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपआयुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गान्धिधाम, द्वारा उपरलिखित जारी मूल आदेश से शक्ति /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellant & Respondent :-

M/s. Ravi Technoforge Pvt. Ltd., Unit (II), Survey No. 50,P-I, At- Pipalia.,Rajkot.,

इस आदेश(अपील) से व्यभिक्त कोई व्यक्ति निम्नलिखित तरीके से उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है /  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत निम्नलिखित जगह की जा सकती है /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वकीलारण मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, पारम, नई दिल्ली, की की जाती चाहिए /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बतलाए गए अपीलार्थ के अलावा एक सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठ, द्वितीय तल, बहामनी भवन असावा अहमदाबाद- 380016 की की जाती चाहिए /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलार्थ न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) विनियम, 2001, के विधाम 6 के अन्तर्गत निर्धारित फीट एवं प्रथम EA-3 को चार प्रतियों में दर्ज किया जाता चाहिए। इनमें से कम से कम एक प्रति के साथ, जहाँ उत्पाद शुल्क की शीट, आराज की शीट और असावा तथा जुर्माना, छपा 5 लाख का उससे कम, 5 लाख तथा वा 50 लाख तथा तक अथवा 50 लाख तथा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न की। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के पास से किसी भी सर्वेजिजिबल बैंक के बैंक दफ्तर जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाता चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलार्थ न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलार्थ न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर निम्नवाली, 1994, के विधाम 9(1) के तहत निर्धारित फॉर्म S.T-5 में चार प्रतियों में की जा सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न की (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहाँ सेवाकर की शीट, आराज की शीट और असावा तथा जुर्माना, छपा 5 लाख का उससे कम, 5 लाख तथा वा 50 लाख तथा तक अथवा 50 लाख तथा से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न की। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थ न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के पास से किसी भी सर्वेजिजिबल बैंक के बैंक दफ्तर जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाता चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलार्थ न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-

(i) क्लिप अपीलेशन, 1994 की धारा 86 की उप-धारा (2) एवं (2A) के अंतर्गत दाये की नयी अपील, सेवाकर विधिसूची, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म ST-7 में की जा सकती एवं उसके साथ अनुबन्ध, केन्द्रीय उत्पाद शुल्क अध्यादेश अनुबन्ध (अपील), केन्द्रीय उत्पाद शुल्क अध्यादेश अपील अधदेश की प्रतियाँ संलग्न की (जिसमें से एक धर्ती प्रमाणित होनी चाहिए) और अनुबन्ध द्वारा सहवर्क अनुबन्ध अध्यादेश अनुबन्ध, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील न्यायाधिकरण को आवेदन देने करने का निर्देश देने वाले अधदेश की प्रति भी साथ में संलग्न करनी होगी। /  
The appeal under sub-section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) बीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सेक्टर) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35एक के अंतर्गत, जो की क्लिप अपीलेशन, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस अधेश के प्रति अपील न्यायाधिकरण में अपील करने समय उत्पाद शुल्कादेश का साथ के 10 प्रतिशत (10%), जब साथ एवं जुर्मोन विवादित है, या जुर्मोन, जब केवल जुर्मोन विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपील देय राशि दस करोड़ रुपए से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'आय किंग ऑफ शुल्क' में निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेक्टर जमा की ले गई रकम राशि  
(iii) सेक्टर जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्त कि इस धारा के प्रवर्तन क्लिप (स. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपील न्यायाधिकरण के समक्ष विचारणीय प्रकरण नहीं एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, 'Duty Demanded' shall include

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **आय कर को पुनरीक्षण आवेदन :**  
**Revision application to Government of India:**  
इस अधेश की पुनरीक्षण साचिक निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पैराग्राफ के अंतर्गत आय कर, आय कर, पुनरीक्षण आवेदन ईकाई, क्लिप मसालय, टारगेट निर्माण, टीपी सॉलिस, जीएम टैप भंडार, सल्ट ग्राह, नई दिल्ली-110001, को किया जाता है। /  
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि आर के किसी नुकसान के मामले में, जहां नुकसान किसी आर को किसी कारखाने से अंतर गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक अंतर गृह से दूसरे अंतर गृह पारगमन के दौरान, या किसी अंतर गृह में या अंतर गृह में आर के प्रसंस्करण के दौरान, किसी कारखाने या किसी अंतर गृह में आर के नुकसान के मामले में। /  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) आर के बाहर किसी राष्ट्र या क्षेत्र को निर्यात का रहे आर के विनिर्माण में प्रयुक्त कच्चे आर पर भी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो आर के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /  
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना आर के बाहर, नेपाल या भूटान को आर निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) अनिवार्य उत्पाद के उत्पादन शुल्क के अंतर्गत के लिए जो क्यूटी केटी इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत आर की गई है और ऐसे अधेश जो अनुबन्ध (अपील) के द्वारा क्लिप अधिनियम (स. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लॉर्ड अध्यादेश समाविष्टि पर या बाद में परिल किया गयी है। /  
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां फॉर्म लकडा EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) विधिसूची, 2001 के नियम 9 के अंतर्गत निर्दिष्ट है, इस अधेश के संशोधन के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल अधेश व अपील अधेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के समय के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /  
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /  
जहां संलग्न रकम एक लाख रुपये या उससे कम है तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। /  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac

(D) यदि इस अधेश में कई मूल अधेशों का समावेश है तो प्रत्येक मूल अधेश के लिए शुल्क का भुगतान, उपरोक्त इस में किया जाना चाहिए। इस तथ्य के होने पर भी की विद्या बड़ी कच्चे से बचने के लिए प्रमाणित अपील न्यायाधिकरण को एक अपील या केटी सरकार को एक आवेदन किया जाना है। /  
In case, if the order covers various numbers of order in Original, fee for each O.I.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) घटायनीय न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल अधेश एवं स्थगन अधेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

(F) बीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (करो विधि) नियमावली, 1982 में उल्लिखित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /  
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपील न्यायाधिकरण को अपील दर्जित करने से संबंधित व्यवस्था, विस्तृत और नवीनतम प्रावधानों के लिए, अपील न्यायाधिकरण वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। /  
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

3  
**:: ORDER-IN-APPEAL ::**


The present appeal has been filed by the Department against Order-In-Original No. 07/D/2016-17 dated 13.06.2016 (hereinafter referred to as "**the impugned order**") passed by the Assistant Commissioner, Central Excise Division – II, Rajkot (hereinafter referred to as "**the lower adjudicating authority**") in the case of M/s. Ravi Technoforge P. Ltd. (Unit-II), Survey No. 50, P-1, At : Pipalia, Rajkot (hereinafter referred to as '**the respondent**').

2. Briefly stated the facts of the case are that the audit of the appellant revealed that they had availed Cenvat Credit of duty on Two Invoices which were hand written. The serial number on the invoices were also hand written and not pre-printed. The appellant had taken Cenvat Credit of Rs. 3,45,326/- on these two invoices, which were not valid document in terms of Rule 9 of the Cenvat Credit Rules, 2004 (hereinafter referred to as "the CCR").

3. Show Cause Notice No. IV/03-08/D/2016-16 dated 29.06.2016 was issued for recovery of wrongly availed cenvat credit under Rule 14 of the CCR, 2004 read with Section 11A of the Central Excise Act, 1944 (hereinafter referred to as '**the Act**') along with interest under Rule 14 of the CCR,2004 read with Section 11AA of the Act and for imposition of penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Act. The proceedings initiated under the said SCN were dropped by the adjudicating authority vide the impugned order.

4. Being aggrieved, the department preferred the present appeal on the following grounds:-

(i) The adjudicating authority has wrongly interpreted the concept of Rule 11 (5) of Central Excise Rules, 2002 which was omitted w.e.f. 01-03-2010 vide Notification No.05/2010-C.E.(N.T.) dated 27/02/2010, read as under;

**Rule 11 (5)** : "The owner or working partner or the Managing Director or the Company Secretary or any person duly authorized for this purpose shall authenticate each foil of the invoice book, before being brought into use." 

(ii) The Adjudicating Authority has wrongly concluded that para 3.2 of chapter 4 of Central Excise Manual was no more relevant to the present issue after omitting of the sub-rule 5 of Rule 11 of the Central Excise Rules,2002. Para 3.2 of Chapter 4 of CBEC's Central Excise Manual read as below:-

3.2. "The serial number can be given at the time of printing or by

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*using franking machine. But when the invoice book is authenticated in the manner specified in sub-rule (5) of rule 11, each foil of the invoice book contain serial number before being brought into use. Hand written serial number shall not be accepted"*

(iii) Thus, from the plain reading of both provisions as stated above, it can be seen that vide para 3.2 of chapter 4 of CBEC's Central Excise Manual, by in between sentence, it was clarified that in such cases, each foil of the invoice book contains serial number before being brought into use. Therefore, omitting of the sub-rule(5) of Rule 11 of the CER,2002 does not allow to ignore the provision of Para 3.2 of Chapter 4. Therefore, by omitting the said clause, only the requirement of authentication of each foil of invoice book, before being brought into use is removed but not removed the prime conditions as discussed above.

(iv) While allowing the said Cenvat Credit, adjudicating authority has relied upon the decision of the Hon'ble CESTAT in the cases of Dhanviridhy Commercial (P) Ltd., reported as 2013(287)ELT 463 (Tri.Kolkattta) and Sukam Gravures Ltd. Reported as (2008)(25) ELT 66 (Tri.-Del). It is pertinent to note that while deciding the Stay application in the identical issue of M/s. Bright Engineering Works reported as 2015(329) E.L.T. 605 (Tri.-Ahmd.) wherein the adjudicating authority had disallowed and confirmed the demand of Cenvat credit of Rs. 1,60,93,316/- along with interest and imposed penalty on the ground that the appellant had availed Cenvat credit on the strength of the invoices, bearing hand written serial numbers, Honble CESTAT, Ahmedabad, vide Misc. Order Nos. M/10958-10959/2015-WZB/AHD, dated 15-6-2015 relied upon decision of the Hon'ble High Court of Himachal Pradesh in the case of Chandra Laxmi Tempered Glass Pvt. Ltd. Reported as 2009 (234) E.L.T. 245 (H.P.). The Hon'ble High Court observed that the invoices were to be pre-printed and not hand written. The Legislative intent is evident from every word used in the Statute. The same has to be complied with. If the view taken by the Hon'ble CESTAT is accepted, it would render the Statute redundant.

(v) In the aforesaid appeal, they had relied upon the decisions of the Hon'ble CESTAT as under :-

- (i) *Sanathan Textiles Pvt. Ltd. v. CCE, Vapi* - 2013 (293) E.L.T. 44 (Tri. - Ahmd.)
- (ii) *CCE, Kol-VII v. Dhanviridhi Commercial (P) Ltd.* - 2013 (287) E.L.T. 463 (Tri. - Kolkata)
- (iii) *N.C. Cable Ltd. v. CCE, Delhi-II*- 2014 (299) E.L.T. 467 (Tri. - Del.)
- (iv) *Pepsico India Holding P. Ltd. v. CCE, Mumbai-II* - 2012 (284)

E.L.T. 514 (Tri. - Mumbai)<sup>5</sup>

- (v) M/s. Bright Engineering Works Versus Commissioner of Central Excise & Service Tax, Daman - 2015(329) E.L.T. 605 (Tri.-Ahmd.)
- (vi) CCE Versus Chandra Laxmi Tempered Glass Pvt. Ltd. - 2009 (234) E.L.T. 245 (H.P.)
- (vii) CCE, Chandigarh v. M/s. Chandra Laxmi Tempered Glass Co. Pvt. Ltd., Barotiwala - 2009 (234) E.L.T. 245 (H.P.)
- (viii) Speedways Rubber Company Versus CCE, Jalandhar 2007 (211) E.L.T. 255 (Tri. - Del.)

5. The Respondent vide their letter and vakalatnama dated 17.10.2016 submitted that department is of the view that the benefit allowed by the adjudicating authority is not proper and justified on the basis of decision referred however while replying on the said decision has ignored the fact that said decisions are not applicable to the present case. The fact that said supplier due to technical mistake in their computer system had issued such document has not been considered in the appeal memorandum and hence the order of the adjudicating authority does not require any modification. They wished to appear personally.

6. Personal hearing in the matter was held wherein Shri Paresh V. Sheth, Advocate appeared and submitted that the said two invoices did not have computer printing due to technical problem in the Computer of the supplier at that time; that 2<sup>nd</sup> proviso of Rule 9 allows Cenvat credit in such situation; that the order of AC is correct as per this 2<sup>nd</sup> proviso; that the provision of Rules override circular issued by CBEC as held in various cases like Bharathi Rubber Lining & Allied Services P. Ltd. reported as 2013 (287) ELT 124 (Tri. Mumbai); that the impugned order passed by the AC is legal & proper and hence appeal of the department may please be rejected. No one appeared from the department even if P.H. notices were sent to them.

**FINDINGS**

7. I have carefully gone through the appeal memorandum, the impugned order submitted by the appellant department and written submissions of the Respondent as well as at the time of hearing. The issue to be decided in the present appeal is whether the impugned order dropping the demand due to denial of Cenvat credit taken by the respondent on two invoices, which were hand written, is proper or otherwise.

7.1 I find that the appellant had taken Cenvat Credit of Rs. 3,45,326/- on two Invoices which were hand written and the serial number on the invoices were also hand written and not pre-printed. I also find that the lower adjudicating authority dropped the demand and proceedings in the light of Notification No. 05/2010-C.E.(N.T.) dated 27/02/2010 wherein it is specified that Para 3.2 of Chapter 4 of Central Excise Manual was no more relevant after omitting Rule 11(5) of the Central Excise Rules, 2002.

7.2 It is a fact that there is no other allegation except that Cenvat Credit taken on hand written two invoices in the memorandum of appeal like duty not paid by the supplier or goods under invoices not received by the respondent or goods were delivered subsequently without being used for manufacture of final product etc. I find that there is no allegation by the department that input covered under said invoices were not received by the respondent and not used in the manufacture of final product.

7.3 I rely on a case law of Pepsico India Holdings P. Ltd. reported as 2017 (349) E.L.T. 665 (Tri. Mumbai) wherein it is as under "

"5. I find that the only allegation for denying the credit is that the appellant availed credit on the invoice which do not appear printed serial number whereas invoices were numbered duly hand written. In one invoice credit was taken on Xerox copy. I find that except these allegations there is no case of the Revenue that input covered under said invoices were not received by the appellant and not used in the manufacture of final product. The credit is allowed in respect of duty suffered on the input and if that is not disputed credit cannot be denied. The allegation made by the Revenue is of procedural nature and for such procedural lapse substantial benefit of Cenvat credit cannot be denied as the duty payment under invoice, receipt of input and use thereof has not been disputed. In the appellant's own case on the similar issue this Tribunal vide Order Nos. A/05&06/2012/SMB/C-IV, dated 9-2-2012 [2012 (284) E.L.T. 514 (Tribunal)] held that as per Rule 11 of Cenvat Credit Rule, 2002 Cenvat Credit can be availed on the strength of invoice which shall be serially numbered, there is no requirement in the rule that invoice should have printed serially numbered, accordingly Cenvat credit was allowed. As regard the credit taken on Xerox copy of invoices, the issue is covered by judgment of Hon'ble Gujarat High Court in case of Steelco Gujarat Ltd. (supra). In view of the settled legal position, I am of the view that impugned order is not sustainable hence, the same is set aside. Appeal allowed."

8 In view of the above, where receipt of inputs in the factory, their duty paid character and utilization of the same in manufacture of final product are not disputed by the department, I am of considered view that the appeal does not hold ground to sustain. I am left with no option but to reject the appeal of the department and uphold the impugned order and I do so.

९. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
9. The appeal filed by the appellant stands disposed off in above terms.

*(कुमार सतोष) 22/01/2012*  
(कुमार सतोष)  
आयुक्त (अपील्स)

By R.P.A.D.

To

1. The Commissioner,  
GST & Central Excise,  
Rajkot
2. M/s. Ravi Technoforge P. Ltd. (Unit-II),  
Survey No. 50, P-1,  
At : Pipalia, Rajkot

Copy to :-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Assistant Commissioner, GST & Central Excise Division -II, Rajkot
3. Guard File.